

CHAPTER 13. MOBILE HOME SPACE RENT STABILIZATION

Section 3-13100. Citation.

This chapter may be referred to as the "Mobile Home Space Rent Stabilization Ordinance" of the City of Fremont.

Section 3-13101. Findings.

(a) The State of California has recognized, by the adoption of special legislation regulating tenancies of mobile home owners in mobile home parks, that there is a significant distinction between the tenants (mobile home owners) of mobile home parks and other dwelling units, and the City of Fremont likewise has recognized that tenants of mobile home parks, unlike apartment tenants or residents of other rental housing, are in the unique position of having made a substantial investment in a residence, the space for which (mobile home space) is rented or leased as distinguished from owned.

(b) There is presently within the City of Fremont and surrounding areas a shortage of developed spaces for the location of mobile homes, and because of the shortage of developed mobile home spaces there is a low vacancy rate in mobile home parks that rent mobile home spaces to mobile home owners.

(c) Mobile home owners, unlike apartment tenants or residents of other rental units, are in the unique position of having made a substantial investment in a residence for which space is rented or leased. Alternative sites for the relocation of mobile homes are difficult to find due to the shortage of vacant mobile home spaces, the restrictions on the age, size, or style of mobile homes permitted in many mobile home parks and requirements related to the installation of mobile homes, including permits, landscaping and site preparation. Additionally, the cost of moving a mobile home is substantial and the risk of damage in moving is significant.

(d) In August 1991, an extensive study on "Mobile Home Ownership in Fremont," funded by the City of Fremont, was completed by Kenneth K. Bar, an expert in the field. The study made the following findings, which are hereby adopted by the city council:

(1) Fremont has three mobile home parks, which contain a total of seven hundred thirty-two mobile home spaces. These mobile home parks opened between 1968 and 1970. They have communal facilities as well as mobile home spaces for the mobile homes.

(2) While the mobile homes in these mobile home parks are denominated "mobile homes," in fact, they are prefabricated homes that have been installed on foundations and have attached improvements, such as carports. Approximately three-quarters of the mobile homes are over one thousand square feet.

(3) As is standard in California mobile home parks, the mobile home spaces in these mobile home parks are rented to mobile home owners. When mobile home owners move, they sell their mobile homes in place. As a practical matter, mobile homes are immobile. They cannot be moved from one mobile home park to another because typically there are no vacant mobile home spaces within mobile home parks in the metropolitan area. Furthermore, the cost of moving mobile homes and setting them up in new mobile home spaces is very high relative to their value. As a practical matter, mobile home owners must sell their mobile homes "in place" and persons who desire to move into mobile home parks must purchase existing mobile homes in order to move into a mobile home park.

(4) Land use regulations effectively prohibit the creation of new mobile home parks by permitting alternative uses at higher densities. In effect, park owners are the beneficiaries of a publicly created monopoly position relative to the mobile home owners in their mobile home park due to the combination of the lack of vacant mobile home spaces in existing mobile home parks and the absence of any likelihood that new mobile home parks will be constructed. On the other hand, conversions of mobile home parks to other uses are subject to municipal approval of an accompanying relocation assistance plan.

(5) Mobile home ownership in a mobile home park has offered the advantage of costs that are less than half the cost of ownership of a single family dwelling. For mobile home owners who have moved in within the past five years, typical mobile home purchase prices have been in the range of \$50,000 to \$70,000. Space rents have been in the range of \$250 to \$375. In contrast, in 1989, the average price for single family detached dwellings, townhouses and condominiums was \$228,999.

(6) The costs of mobile home ownership are comparable to the cost of renting an apartment. Typical rents for apartments range from \$600 to \$850. The combined costs of mobile home park space rents of \$350 and the carrying costs for a \$50,000 mobile home (\$500 per month) are in the range of \$850. However, apartment living does not offer the advantage of providing each occupant with a detached structure, which can be modified and improved by its occupant. Also, mobile homes are larger on the average.

(7) The chief shortcoming of mobile home ownership is that the investment in the mobile home is subject to the rental conditions for the underlying land, that is not in control of the mobile home owner.

(8) The existence of housing alternatives for mobile home owners is largely dependent on the maintenance of their equities in their mobile homes. They can relocate to other types of housing only if they can "relocate" their equity in their mobile homes.

(e) The result of these conditions has been and continues to be the creation of a captive market of mobile home owners and a great imbalance in the bargaining position of the park owners and mobile home owners in favor of the park owners.

(f) This market situation has contributed or threatens to contribute to unreasonable space rent increases for mobile home spaces. This situation has resulted in serious concern and stress among significant portions of Fremont residents living in mobile home parks, who have sought and requested the city to adopt and maintain a rent stabilization ordinance to address their concerns. Because mobile homes are often owned by senior citizens, persons on fixed incomes, and persons of low and moderate income, significant rent increases fall upon these individuals with particular harshness.

(g) This market situation has also contributed to or threatens to contribute to other abuses by park owners which this ordinance also seeks to remedy or prevent, including protections against retaliation.

(h) After reviewing and considering whether and what type of mobile home rent regulation ordinance or rent stabilization ordinance is needed in the city, the city council finds and declares it necessary, in the public interest, to protect the mobile home owners from unreasonable rent increases and other abusive or disruptive practices by park owners. This ordinance should not be interpreted or applied in a way that would

deprive a park owner of the constitutionally protected right to receive a just and reasonable return on their property.

(i) Policy H 3.3.3. of the Housing Element of the General Plan states the city shall "preserve the existing availability and affordability of mobile home sites."

(j) The council finds that the adoption of this ordinance will not have a significant, substantial or exact adverse effect on the physical environment of the community because enactment of this ordinance involves no deviation from the general plan and no change in the present use of any property within the city.

Section 3-13102. Definitions.

For purposes of this chapter certain words and phrases shall have the meanings set forth herein unless it is apparent from the context that a different meaning is intended.

(a) Abandoned in-place An "abandoned mobile home" as defined in California Civil Code § 798.61, a mobile home physically abandoned by the lawful owner, a home taken by a creditor pursuant to law, a home relinquished to a creditor voluntarily, or a home transferred to a new owner who fails to demonstrate control, occupancy or intent to manage or sell or transfer the mobile home for a continuous period of one hundred twenty days following vacancy of the home by the former owner.

(b) Affected mobile home owners All mobile home owners in a mobile home park who have been notified by the park owner that a rent increase is to become effective on the same date, or who have been otherwise made aware, in the absence of such notification, that a rent increase (including a reduction in housing service) has or is to become effective on the same date.

(c) Capital improvements Capital improvements are those expenditures at a mobile home park that may be characterized as capital improvements for federal income tax purposes.

(d) Commercial purchaser A business including, but not limited to, limited liability corporations, corporations, partnerships or any form of association engaged in mobile home sales as a business. A commercial purchaser shall not include a person or legal entity who is a creditor of the home owner or other lien holder on the mobile home.

(e) Consumer Price Index The Consumer Price Index for all Urban Consumers San Francisco-Oakland-San Jose area (or, if the area designation is revised,

for the area that encompasses Fremont), published by the U.S. Department of Labor, Bureau of Labor Statistics.

(f) Current tenant In section 3-13104.1, the person(s) in possession of a mobile home space on the effective date of Ordinance No. 2390.

(g) Domestic partner A person, other than a lawful spouse, residing in the mobile home with the home owner for one year or longer prior to transfer of title.

(h) Effective date In section 3-13104.1, the date the ordinance enacting this definition became effective, July 25, 2000.

(i) Hearing officer A person:

(1) Who is neither a mobile home owner nor who has an interest in a mobile home park of a nature that would require disqualification under the provisions of the Political Reform Act if the person were an elected state official; and

(2) Who the rent review officer determines meets one of the following qualifications:

(I) Completion of a Juris Doctor or equivalent degree from a school of law and completion of a formal course of training in arbitration which, in the sole judgment of the rent review officer, provides that person with the knowledge and skills to conduct a rent increase dispute arbitration in a professional and successful manner; or

(II) Completion of at least three proceedings for a superior court or other public entity that involved issues the rent review officer considers similar to those raised in rent increase dispute hearings.

(j) Housing services A service provided by the park owner related to the use or occupancy of a mobile home space, including but not limited to maintenance of the common area of the mobile home park, for which the park owner expends money or other quantifiable consideration to provide. For purposes of this ordinance housing services do not include intangibles or other benefits associated with living at the property for which the park owner does not expend money or other quantifiable consideration to provide.

(k) In-place transfer A sale, transfer or other conveyance of a mobile home with the mobile home remaining on the mobile home space following the sale, transfer or other conveyance.

(l) Mobile home A structure designed for human habitation and for being moved on a street or highway under permit pursuant to section 35790 of the Vehicle Code. "Mobile home" includes manufactured home, as defined in the Health and Safety Code, but does not include a recreational vehicle, as defined in section 799.24 of the Civil Code, or a commercial coach, as defined in section 18001.8 of the Health and Safety Code, or factory-built housing as defined in section 19971 of the Health and Safety Code.

(m) Mobile home owner A person who has a tenancy in a mobile home park under a rental agreement, having the right to the use of a mobile home space on which to locate, maintain and occupy a mobile home, site improvements and accessory structures for human habitation, including the use of the services and facilities of the mobile home park. "Mobile home owner" does not include a person who is a resident in a mobile home but who does not have a tenancy.

(n) Mobile home park Any area or tract of land within the city where two or more mobile home spaces are rented, or held out for rent, to accommodate mobile homes.

(o) Mobile home space The site within a mobile home park intended, designed, or used for the location or accommodation of a mobile home and any accessory structures or appurtenances attached thereto or used in conjunction therewith. "Mobile home space" does not include any newly constructed space initially held out for rent after January 1, 1990.

(p) Park owner Any person or entity that owns, leases, or subleases a mobile home park and/or a mobile home park business in the City of Fremont.

(q) Park owner's agent A park owner's agent is anyone designated or approved by the park owner to perform one or more of the park owner's obligations under this ordinance, such as an on-site manager. Although a park owner's agent may perform any task required to be performed by the park owner under this ordinance, the park owner's agent shall have no personal liability under this ordinance to any tenant for a violation of this ordinance. However, the park owner may be liable for any violation of this ordinance committed by the park owner's agent.

(r) Percent change in Consumer Price Index The annual percent change in the Consumer Price Index, calculated to the nearest tenth, published for the month of February, issued in the month of March. In the event that an index is not published for the

month of February, the closest preceding month for which an index is published shall be used.

(s) Rental agreement An agreement between the park owner and the mobile home owner of a mobile home space establishing the terms and conditions of a mobile home park tenancy. A lease is a rental agreement.

(t) Rent base The space rent charged and allowed pursuant to this ordinance on January 1, 1986, plus any rent increase allowed thereafter pursuant to this ordinance unless otherwise provided.

(u) Rent increase Any additional space rent demanded of or paid by a mobile home owner for a mobile home space, including any reduction in housing services without a corresponding decrease in the amount demanded or paid for space rent.

(v) Rent review officer The person or persons designated by the city manager to administer and enforce the provisions of this ordinance.

(w) Service reduction Any reduction in housing services below the level existing on or after January 1, 1986, which results in a cost savings to the park owner without a corresponding decrease in rent. The reduction or deferment of maintenance below the level existing on or after January 1, 1986, may constitute a service reduction. However, normal wear and tear of the common area facilities and/or the mobile home space does not constitute a service reduction.

(x) Space rent The money demanded or received by a park owner for the use or occupancy of a mobile home space and the nonexclusive use of the common area facilities, but excluding separately billed utilities or reasonable charges for services actually rendered. Nothing in this ordinance shall prevent a park owner from agreeing to allow not more than five percent of the tenants to provide consideration other than money to reside at the park, including allowing tenants to work at the park to pay off their rent. In such cases, the city shall make no attempt to determine whether such non-monetary consideration is in fact more or less valuable than the space rent charged for any particular space. Nothing in this ordinance shall be deemed to regulate the rent charged for mobile homes, as opposed to mobile home spaces.

(y) Subsequent transfer of title All transfers of title following January 1, 2002 other than a transfer of title described in section 3-13104.1(a)(1) and (2) of this chapter.

(z) Substantial rehabilitation That work done by a park owner to a mobile home space, housing services or to the common area of the mobile home park, exclusive of a capital improvement, the value of which exceeds two hundred dollars and which is performed either to secure compliance with any state or local law or to repair damage resulting from fire, earthquake or other casualty or natural disaster, to the extent [that] the cost of such work is not reimbursed by insurance, security deposit proceeds or any other source.

(aa) This ordinance Chapter 13 of Title III of the Fremont Municipal Code, including the ordinance adopting chapter 13 and all subsequent ordinances amending chapter 13.

(bb) Vacancy decontrol The partial or full removal of rent increase limitations otherwise required by this chapter when an existing mobile home owner is party to an in-place transfer or the mobile home is abandoned in-place.

Section 3-13103. Mobile home space rent increase limitations.

(a) The space rent payable for use or occupancy of any mobile home space shall not be increased by a park owner in excess of the increases allowable under sections 3-13104 and 3-13104.1 of this chapter.

(b) Upon the re-renting of each mobile home space the park owner shall provide the new mobile home owner with a current copy of this ordinance. The park owner shall also provide each mobile home owner with a copy of any revision to this ordinance, within thirty days of the adoption of the revision. Upon written request of the park owner, the rent review officer shall provide the park owners with a sufficient number of updated copies of this ordinance within ten days of such request, provided that the failure of the rent review officer to provide copies of this ordinance shall not excuse the park owner from compliance with this ordinance.

(c) The rent increases limitations and procedures set forth in this section shall not apply to rental agreements subject to section 798.17 (a) and (b) of the Civil Code, to newly constructed mobile home spaces pursuant to Civil Code section 798.45 or to separately billed utilities pursuant to Civil Code section 798.41.

(d) The park owner shall report in writing to the rent review officer any decrease in space rent for any mobile home space, including any decrease resulting from a reduction in housing services.

(e) Any rent increase imposed by the park owner without compliance with the notice, documentation or reporting requirements of this ordinance shall be void and invalid; and such failure to comply with these provisions by the park owner shall be a defense in any action brought by the park owner to recover possession of the mobile home space or to collect any rent increase from the mobile home owner.

Section 3-13104. Right to and procedure for standard rent, special rent, administrative fee rent and capital improvement rent increases.

(a) Standard rent increases Once every twelve months the park owner may impose a standard rent increase equal to the greater of:

- (1) Three percent; or
- (2) Ten dollars per month; or
- (3) Sixty percent of the percent change in the Consumer Price Index,

provided that no standard rent increase of more than six percent may be imposed in any twelve-month period.

All standard rent increases shall become a permanent part of the base rent upon which future increases are based.

(b) Special rent increases Rents at Southlake Mobile Home Park and Niles Canyon Mobile Home Park may be increased by an additional \$3.87 each year in the years 1995, 1996, 1997, 1998, 1999, 2000 and 2001. The \$3.87 special rent increases at Southlake and Niles Canyon are not required to take effect the same date as the annual standard rent increase at Southlake and Niles Canyon. All special rent increases shall become a permanent part of the space rent upon which future rent increases are based. NOTE: The city council's findings setting forth the justification for the special rent increases at Southlake and Niles Canyon are set forth in section 4 [not set out herein] of this ordinance.

(c) Administrative fee rent increases Once every twelve months the park owner may increase the mobile home owner's rent based on the mobile home owner's pro-rata share of the city's rent stabilization administrative fee, as calculated pursuant to

section 3-13115 of this ordinance. Said administrative fee shall be noticed and implemented at the same time as any standard rent increase during said twelve-month period. Said administrative fee rent increase shall not be included as part of the base rent upon which future rent increases are based and shall be deleted from the space rent once the mobile home owner's pro-rata share of said administrative fee rent increase has been collected.

(d) Capital improvement rent increases A park owner may increase the mobile home owner's rent based on the mobile home owner's pro-rata share of capital improvement expenditures in the park, provided that such increases are certified pursuant to this subsection and subsections 3-13104.2 through 3-13104.8. The purpose of this subsection is to provide the park owner a streamlined procedure for recovering capital improvement dollars invested in the mobile home park. Any such rent increase shall be amortized over the useful life of the capital improvement, using the table of capital improvement life expectancies attached hereto as Schedule A [on file with city; not set out herein]. If the table of capital improvement life expectancies is not applicable, the park owner shall use the Class Life Asset Depreciation Range System ("ADR System"). Interest may be imputed on any such rent increase(s) using the prime rate in effect thirty days prior to the date of the application, plus two percent. However, in no event may any single rent increase, or any cumulative rent increases under this subsection exceed five percent of the mobile home owner's then existing rent. Any rent increase implemented under this subsection based on the cost of a capital improvement shall not be included as part of the base rent upon which future rent increases under this ordinance are based and shall be deleted from the space rent once the mobile home owner's pro-rata share of the capital improvement rent increases has been recovered.

Nothing in this subsection shall preclude a park owner from foregoing the right to seek a rent increase under this subsection and instead applying for a major rent increase, including applying for a major rent increase based on capital improvement expenditures that would otherwise result in a rent increase in excess of five percent of the mobile home owner's then existing rent.

(e) "Major" rent increases In the event a park owner proposes to increase the space rent payable for any mobile home space, within any twelve-month period, more

than the amounts permitted in this section, the provisions set forth in section 3-13106 and other provisions of this ordinance shall be followed.

(f) Rent increase notices The standard rent increase notices shall advise the mobile home owner of both the dollar amount of any standard rent increase and the percentage amount of any standard rent increase. Any administrative fee rent increase notice shall include the calculations used by the park owner to determine the amount to be charged to each affected mobile home owner according to the following formula: total fee charged to park owner X .35% / number of affected spaces / twelve months. All rent increase notices under sections 3-13104(a), (b) and (c), but not (d), shall also contain the following information in substantially the following form:

NOTICE: THE RENT FOR YOUR SPACE IS SUBJECT TO THE CITY OF FREMONT'S RENT STABILIZATION ORDINANCE, WHICH PROVIDES FOR ANNUAL STANDARD RENT INCREASES EQUAL TO THE GREATER OF (1) THREE PERCENT OR (2) \$10 OR (3) SIXTY PERCENT OF THE INCREASE IN THE CONSUMER PRICE INDEX, PROVIDED THAT NO ANNUAL STANDARD RENT INCREASE MAY EXCEED SIX PERCENT. IF YOU RESIDE AT SOUTHLAKE OR NILES CANYON, YOUR RENT MAY BE INCREASED BY AN ADDITIONAL \$3.87 IN 1995, 1996, 1997, 1998, 1999, 2000 and 2001. THE RENT STABILIZATION ORDINANCE ALSO PROVIDES FOR RENT INCREASES BASED ON YOUR PRO-RATA SHARE OF THE COST OF ADMINISTERING THE ORDINANCE.

IF YOU BELIEVE YOUR RENT IS BEING INCREASED MORE THAN THE AMOUNT PERMITTED BY THE ORDINANCE YOU MAY CONTACT THE CITY OF FREMONT'S RENT REVIEW OFFICER WITHIN FIFTEEN DAYS OF THE POSTMARKED DATE OF THIS NOTICE AT (510) __-__. IF THE RENT REVIEW OFFICER DETERMINES THAT THE PARK OWNER HAS INCREASED YOUR RENT MORE THAN THE AMOUNT PERMITTED BY THE ORDINANCE THE RENT REVIEW OFFICER WILL NOTIFY THE PARK OWNER AND PROVIDE THE PARK OWNER FIFTEEN DAYS TO CURE THE DEFECT BY DECREASING YOUR RENT TO THE APPROPRIATE AMOUNT AND REFUNDING ANY OVERCHARGED AMOUNTS.

IF THE PARK OWNER FAILS TO SUBMIT PROOF TO THE RENT REVIEW OFFICER WITHIN FIFTEEN DAYS TO SATISFACTORILY ESTABLISH THAT THE DEFECT HAS BEEN CURED THE RENT REVIEW OFFICER SHALL APPOINT A HEARING OFFICER AND SCHEDULE A HEARING WITHIN FORTY DAYS THEREAFTER TO HEAR EVIDENCE, TO CALCULATE THE APPROPRIATE AMOUNT OF YOUR RENT INCREASE AND TO REFUND ANY OVERCHARGED AMOUNTS. IF THE RENT REVIEW OFFICER IS SATISFIED THAT THE PARK OWNER HAS CURED THE DEFECT THE RENT REVIEW OFFICER WILL NOTIFY YOU. IF YOU ARE NOT SATISFIED WITH THE RENT REVIEW OFFICER'S DETERMINATION YOU WILL HAVE FIFTEEN DAYS TO FILE A PETITION. IN THE EVENT YOU FILE SUCH A PETITION A HEARING WILL BE HELD WITHIN FORTY DAYS THEREAFTER.

(g) Notice to rent review officer Prior to noticing a rent increase under subsections (a), (b) or (c), the park owner shall file a declaration under penalty of perjury with the rent review officer, stating the amount of any rent increase to be noticed pursuant to this section, the old space rent and the new space rent. Subsequent to the notice of rent increase under subsections (a), (b) or (c), the park owner shall file a second declaration that a copy of the notice required by section 3-13104(f) was delivered (personally or by mail) to each affected mobile home owner. Said second declaration shall be filed with the rent review officer within five working days of the notice to the tenants.

(h) Failure to comply A park owner failing to provide an affected mobile home owner the information, documents, or notices required by this section shall not be entitled to collect any rent increase otherwise authorized by this ordinance. Such failure by the park owner shall be a defense in any action brought by the park owner to recover possession of the mobile home space or to collect any rent increase from the affected mobile home owner. A park owner may remedy such failure by providing the affected mobile home owner with the required information, documents, or notices, before initiating an action for possession of the mobile home space or collecting any rent increase otherwise authorized by this ordinance.

(i) Procedure for protest

(1) Complaint re: notice Within fifteen days of the postmarked date of a rent increase notice pursuant to section 3-13104(a), (b) or (c), or a statement of new rent pursuant to 3-13104.1(c), a mobile home owner may file a complaint with the rent review officer regarding the propriety of said notice or statement of new rent. If such a complaint is not filed the rent increase shall go into effect as noticed and be exempt from any further challenge under this chapter.

(2) Determination re: propriety of notice The rent review officer shall have fifteen days from the date of filing of said complaint to determine the propriety of said rent increase notice. The determination of propriety by the rent review officer for a standard rent increase or a special rent increase shall be limited to verifying the accuracy of the amount of the rent increase allowed, pursuant to section 3-13104(a) and (b) of the ordinance. The determination of propriety by the rent review officer of an administrative fee rent increase shall be limited to verification of the payment of the amount claimed by the park owner and the calculation used to apportion such amount among the affected mobile home owners. If the rent review officer determines the park owner has increased the rent in compliance with section 3-13104(a), (b) or (c) the rent review officer shall have fifteen days to so notify the affected mobile home owners in writing.

(3) Opportunity to cure If the rent review officer determines the park owner has increased the rent more than the amount permitted by section 3-13104(a), (b) or (c) the rent review officer shall notify the park owner in writing and provide the park owner with fifteen days to cure the defect and refund any overcharged amounts.

(4) Defect cured If the rent review officer is satisfied that the defect has been cured the rent review officer shall notify the complaining mobile home owner in writing within fifteen days.

(5) Hearing initiated by rent review officer If the park owner fails to submit proof to the rent review officer within fifteen days to satisfactorily establish that the defect has been cured the rent review officer shall appoint a hearing officer and schedule a hearing within forty days thereafter, so as to hear evidence, to calculate the appropriate amount of the rent increase and to award restitution of any overcharged amounts. Said hearing shall be conducted pursuant to section 3-13107 of the ordinance.

(6) Hearing initiated by mobile home owner If the mobile home owner is not satisfied with any determination of the rent review officer regarding a rent increase

under subsections (a), (b) or (c) the mobile home owner shall have fifteen days to file a petition, contesting the rent review officer's determination. The rent review officer shall appoint a hearing officer and schedule a hearing within forty days thereafter. Said hearing shall also be conducted pursuant to section 3-13107 of the ordinance.

Section 3-13104.1. Vacancy decontrol space rent increase authorized.

(a) Partial vacancy decontrol of space rent. Upon closure of an in-place sale, transfer or other conveyance of a mobile home, the park owner may increase the space rent for the space underlying the mobile home as follows:

(1) Ten percent increase for initial turnovers through December 31, 2001. The rent for the space of each current tenant may be increased by up to ten percent following the sale or transfer of title to a new tenant when such sale or transfer occurs on or before December 31, 2001, except as provided herein.

(2) Fifteen percent increase for initial turnovers from January 1, 2002 through December 31, 2019. For the first sale or transfer occurring between January 1, 2002 and December 31, 2019 the rent for the space of each current tenant may be increased by up to fifteen percent following the sale or transfer of title to a new tenant, except as provided herein.

(3) Inflationary adjustments for subsequent turnovers. Subsequent transfers of title through December 31, 2019 may be subject to an increase in rent equal to the percentage change in the Consumer Price Index between the time of the previous transfer and the time of the then relevant transfer, except as provided herein. Rent increases for each subsequent transfer shall not exceed fifteen percent even if the change in the Consumer Price Index exceeds fifteen percent.

(4) Vacancy decontrol increases are in addition to other authorized increases. The vacancy decontrol space rent increase authorized by this section shall be in addition to any other rent increase authorized by this chapter.

(b) Full vacancy decontrol of space rent.

(1) A park owner may increase space rent in any amount when a commercial purchaser replaces a mobile home with a new or different mobile home.

(2) A park owner may increase space rent in any amount when a mobile home is abandoned in-place or when a vacancy results from a lawful eviction.

The new rent base shall be subject to all the requirements of this chapter after the increase.

(3) The vacancy decontrol space rent increase authorized by this section shall be in addition to any other rent increase authorized by this chapter.

(c) Space rent lock-in.

(1) Upon written request by a home owner intending to sell a mobile home in-place, the park owner or park manager shall, within five calendar days of any request, provide to the home owner a written statement of the increase in rent due to vacancy decontrol. The statement shall be signed by the park owner or park manager.

(2) The statement shall be valid for a period of one hundred twenty days from the date it is signed by the park owner or manager.

(d) Exemptions to vacancy decontrol.

(1) An in-place transfer of a mobile home to a spouse, parent, child, siblings, grandparent, grandchild, or domestic partner of the mobile home owner or a person who was a joint tenant of the mobile home owner on the effective date is exempt from a vacancy decontrol rent increase under this chapter.

(2) A temporary removal of a mobile home to allow rehabilitation, capital improvements, or upgrades of the mobile home or a replacement of a mobile home with a new or different mobile home by an existing homeowner on the same space is exempt from a vacancy decontrol rent increase under this section.

Section 3-13104.2. Capital improvement rent increase certification requirements.

(a) Generally. In accordance with the procedures set forth in section 3-13104.4 or 3-13104.6, costs determined to be attributable to qualifying capital improvements shall be amortized over the relevant period as established for the type of work performed in the table of capital improvement life expectancies attached hereto as Schedule A [on file with city; not set out herein], or if applicable, the ADR system. The intention of this section is to provide an incentive to park owners to improve and renovate their property, while at the same time protecting mobile home owners from excessive rent increases.

Applications must be filed and certification issued prior to the collection of a capital improvement rent increase.

In order to promote advance fiscal planning, park owners shall have the option of pre-certifying capital improvements pursuant to section 3-13104.4 in advance of performing the work. In the alternative, park owners may apply for certification after the work is completed.

(b) Requirements. Costs of capital improvements may only be certified where the following criteria are met:

- (1) The capital improvements were completed or are to be completed on or after January 1, 1995;
- (2) The park owner has not yet increased the rent or rents to reflect the cost of the work;
- (3) The park owner has not been or will not be compensated for the work by insurance proceeds;
- (4) The park owner files the certification application no later than twenty-four months after the work has been completed;
- (5) The costs are capital improvements as opposed to routine repair;
- (6) The costs of the capital improvement are not associated with the purchase or installation of meters or other similar devices used for the separate billing of utilities;
- (7) The individual mobile home owner's pro-rata share of the capital improvement costs, or the cumulative capital improvement costs assessed if one or more capital improvement rent increases have been imposed and are still being charged, will not exceed five percent of the then existing base rent.

(c) Cost allocation. The cost of capital improvements shall be allocated on a pro-rata basis to affected mobile home owners.

(d) Declaration re: tax treatment of capital improvement: At the time of filing an application for a capital improvement rent increase the park owner shall submit to the rent review officer a declaration under penalty of perjury stating that the park owner has, or will, treat the capital improvement as a capital improvement for federal income tax purposes. Once each year during the amortization period for the capital improvement the rent review officer may request the park owner to provide an updated declaration stating under penalty of perjury that the park owner treated the capital improvement as a capital improvement for federal income tax purposes on the park owner's most recent tax return.

In the event the park owner does not provide the rent review officer with such a declaration within sixty days of the rent review officer's request, the rent review officer may appoint a hearing officer to conduct hearings in order to recalculate the amount of the capital improvement rent increase. The hearing and recalculation shall proceed on the presumption that the park owner received a tax deduction for all of the previously non-amortized portion of the capital improvement expenditure during the year immediately following the last year for which the park owner submitted a declaration stating that he was amortizing the capital improvement in accordance with federal law. The sole purpose of the hearing shall be to readjust the amount of the capital improvement rent increase to disallow any excess income the park owner may receive by expending all of the previously non-amortized portion of the capital improvement in the year immediately following the park owner's most recent declaration on the subject, rather than continuing to amortize the capital improvement. The park owner shall not be required to submit such a declaration and no such recalculation shall occur if federal law has been changed so that the capital improvement may no longer be amortized, or if the park is sold, in which case the new owner may not be able to amortize any capital improvement expenditure made by the previous owner.

Section 3-13104.4. Pre-certification procedure for capital improvement rent increase.

(a) Application. Park owners who seek to ascertain whether the cost of proposed capital improvement projects will be certified may file an application with the rent review officer to have the determination regarding whether the costs may be passed on to the residents made in advance of incurring those costs. The application shall be on a form established by the rent review officer.

(b) Supporting documentation. The application shall contain the following information and be accompanied by copies of relevant supporting documentation.

- (1) A description of the improvement.
- (2) Contracts or bid documents showing the cost estimate of the proposed improvement.
- (3) The amortization period to be used.
- (4) The interest rate to be used.
- (5) The formula used to calculate the pro-rata share of each resident.

(6) The monthly cost to each resident in dollars.

(7) That the cumulative cost of all capital improvement rent increases in effect and to be approved will not exceed five percent of the then existing base rent of each tenant.

(c) Notification to mobile home owners. Copies of the application together with the supporting documentation shall be served on all affected mobile home owners, together with a notice of rent increase based on the estimated cost of the capital improvement. In the alternative park owners may opt to serve the mobile home owners with summaries of the information in lieu of the actual documentation. In the event that summaries are used, the notice provided to the mobile home owners shall state that the complete documentation supporting the application can be reviewed at the park office, and at the office of the rent review officer. The documentation supporting the application must be made available for review at the specified park location during normal hours of operation. Proof of service either of the application and supporting documentation or of the summaries on the mobile home owners shall be required before the application will be deemed complete.

(d) Objection by mobile home owners. Mobile home owners shall have sixty days from the post-marked date of the above-described notification to file an objection to the application for a capital improvement rent increase. If objections signed by ten percent of the affected mobile home owners are not filed within the sixty-day period, the rent review officer shall pre-certify the capital improvements in the amount requested. The increase may not go into effect until the capital improvements are completed. If objections signed by the requisite number of affected mobile home owners are received in a timely fashion by the rent review officer, a hearing on objections shall be held pursuant to the provisions of section 3-13104.8. The decision shall be subject to subsection 3-13104.4(e).

(e) Effect of pre-certification. Where park owners employ this pre-certification procedure, and obtain a decision allowing the capital improvement costs in a particular amount, they may proceed to make the improvements and are entitled to recover the pre-certified costs as set forth herein. Upon the completion of the improvements the park owners are to submit to the rent review officer documentation of

the actual cost of the capital improvement, and the rent increase notice to be sent to the affected mobile home residents.

(1) If the actual cost was less than the estimated cost, only the amounts actually incurred may be passed through to the mobile home owners in their proportionate share. In that case, a new notice of capital improvement rent increase identifying the actual amount to be charged must be sent to the affected mobile home owner before the rents may be raised.

(2) If the actual cost of the capital improvement was more than estimated, the park owner has the option of waiving the excess amount and collecting only the pre-certified amount. Alternatively, the park owner may provide a second notice of capital improvement rent increase in the full amount incurred. In the event that the park owner notices an increase in the full amount, affected mobile homeowners will be entitled to object to that portion and only that portion of the increase that exceeds the amount allowed in the pre-certification decision. The procedure for objection will be that contained in section 3-13104.8 provided however that the sole basis for objection will be the grounds identified in paragraph (c) in 3-13104.8.

Section 3-13104.6. Post capital improvement certification procedure for rent increase.

(a) Application. Park owners who seek to pass through the cost of capital improvements after they are completed through this certification procedure, rather than through pre-certification or through a major rent increase petition, must file an application with the rent review officer on a form established by the rent review officer.

(b) Supporting documentation. The application shall contain the following information and be accompanied by copies of relevant supporting documentation:

- (1) A description of the improvement.
- (2) Contract documents showing the actual cost of the improvement including copies of all checks and invoices for the project.
- (3) The amortization period to be used.
- (4) The interest rate to be used.
- (5) The formula used to calculate the pro-rata share of each resident.
- (6) The monthly cost to each resident in dollars.

(7) That the cumulative cost of all capital improvement rent increases in effect and sought to be approved will not exceed five percent of the then existing base rent of each tenant.

(c) Notification to mobile home owners. Copies of the application together with the supporting documentation shall be served on all affected mobile home owners together with a notice of rent increase based on the cost of the capital improvement. In the alternative, park owners may opt to serve the mobile home owners with summaries of the information in lieu of the actual documentation. In the event that summaries are used, the notice provided to the mobile home owners shall state that the complete documentation supporting the application can be reviewed at the park office and at the office of the rent review officer. The documentation supporting the application must be made available for review at the specified park location during normal hours of operation. Proof of service of the application and supporting documentation or the summaries on the mobile home owners shall be required before the application will be deemed complete.

(d) Objection by mobile home owners. Mobile home owners shall have sixty days from the date the application is deemed complete to file an objection to the application for a capital improvement rent increase. If objections signed by ten percent of the affected mobile home owners are not filed within the sixty-day period, the rent review officer shall certify the capital improvements in the amount requested, and the increase may be imposed as noticed. If objections signed by the requisite number of affected mobile home owners are received in a timely fashion by the rent review officer, a hearing on objections shall be held pursuant to the provisions of section 3-13104.8.

Section 3-13104.8. Procedure for hearing objections.

(a) Scheduling of hearing on objection. Within ten working days of receipt of objections to application for a capital improvement rent increase, signed by ten percent or more of the affected mobile home owners, the rent review officer shall appoint a hearing officer. The rent review officer shall set a date for the hearing no sooner than ten calendar days, nor later than thirty calendar days after the hearing officer is assigned, provided that the rent review officer or hearing officer may set or reset the date for the hearing at a later date upon application of either or both parties for good cause. The rent review officer shall provide prompt notice of the hearing date to the park owner and affected mobile home owners.

(b) Conduct of hearing. The hearing shall be conducted by the appointed hearing officer. The parties may offer such documents, testimony, written declarations or other evidence as may be pertinent to the proceedings. A record of the proceedings shall be maintained for purposes of appeal.

(c) Burden of proof at hearing and grounds for contesting increase.

(1) Park owner's initial burden of proof. The burden shall initially be on the park owner to establish that the required information regarding the capital improvement in the park owner's rent increase notice is accurate, including:

- (I) The cost of the capital improvement project.
- (II) The interest rate used by the park owner.
- (III) The amortization period used by the park owner.
- (IV) The formula used to calculate the pro-rata share of each

resident.

(V) The determination that the cumulative capital improvement rent increases will not exceed five percent of the then existing base rent.

(2) Mobile home owner's burden of proof to rebut. In the event park owner establishes that the required information regarding the capital improvement in the park owner's capital improvement rent increase application is accurate, the burden shall shift to the mobile home owner to defeat or reduce the amount of the capital improvement expenditure solely on the following four alternative grounds:

(I) The cost of the capital improvement project was clearly excessive given industry standards.

(II) The capital improvement was necessitated due to the elimination, reduction, or deferment of maintenance below the level existing on or after January 1, 1986, thereby requiring replacement of the pre-existing improvement prior to the expiration of its normal expected life, as adjusted pursuant to subsection 3-13104.8(e).

(III) That the interest rate charged is greater than financing reasonably available to the park owner in an arm's length transaction with a private lending institution.

(IV) That the improvement was not reasonably related to the operation of the mobile home park business.

(d) Remedy if burden of proof met by mobile home owners. The purpose of the preceding four alternatives for contesting capital improvement rent increases is to ensure the good faith of park owners, including but not limited to ensuring that park owners do not engage in nepotism, kick-backs and/or deferred maintenance, or make improvements that are unnecessary to the operation of the mobile home park business. If the hearing officer determines that the tenants have satisfied their burden of proof with respect to all or any part of the cost of a capital improvement expenditure, the hearing officer may reduce the amount of the rent increase by a corresponding amount, but not more, subject to the limitations set forth in subsection 3-13104.8(e) below. In the event the hearing officer determines that the park owners have engaged in perjury, fraud, nepotism, or kick-backs with respect to a capital improvement rent increase the hearing officer may reduce the amount of the rent increase to the level the hearing officer deems appropriate under the circumstances.

(e) Limitations on grounds for contesting rent increase. In determining the normal expected life of a capital improvement the hearing officer shall look first to the amortization table attached hereto as Exhibit A [on file with city; not set out herein], or, if not applicable the ADR System and/or the regulations, guidelines and amortization tables established by the Internal Revenue Service for capital improvements. It is recognized that the normal expected life of a capital improvement is based on averages and that the actual life may fall short of the normal expected life, for reasons other than deferred maintenance. In the event the normal expected life of a capital improvement is less than five years, the "adjusted expected life" of the capital improvement shall be ninety percent of its normal expected life. In the event the normal expected life of a capital improvement is five years or more, the "adjusted expected life" of the capital improvement shall be eighty percent of its normal expected life. Where a mobile home owner challenges a capital improvement pursuant to Section 3-13104.8(c)(2)b. the hearing officer may not reduce the amount of the rent increase by an amount in excess of the difference between the actual life of the capital improvement and its "adjusted expected life." For example, if the mobile home owners establish that as a result of deferred maintenance a pre-existing capital improvement with an expected life of ten years and an "adjusted expected life" of eight years, in fact only lasted seven years, the hearing officer may reduce the amount of the requested rent increase by ten percent, but no more. In no event may the hearing

officer reduce the amount of a capital improvement rent increase based on alleged deferred maintenance where the capital improvement rent increase is necessitated by a catastrophe, act of God, or other uncontrollable circumstance, including earthquakes, landslides, earth movement, fire or flood.

(f) Determination of hearing officer. The hearing officer shall make findings as to whether or not the proposed rent increases, or any portion thereof are allowable under this subsection.

(g) Decision of hearing officer. The hearing officer shall prepare written findings of fact, and shall certify the amount of the capital improvement increase to be allowed, if any. Within fifteen working days of the conclusion of the hearing, the hearing officer shall serve the decision on the rent review officer, who shall forthwith distribute copies of the decision by mail or other means to the park owner and all affected mobile home owners.

(h) Decision final. The decision of the hearing officer is final and binding upon the park owner and all affected mobile home owners on the date of mailing or other service of the decision by the rent review officer regardless of their participation or lack of participation in the hearing process unless challenged pursuant to section 3-13107(g). Park owner may impose a capital improvement rent increase only in the amount allowed by the rent review officer and/or the hearing officer pursuant to the certification process.

(i) Post certification notice. In the event the certification procedure is not completed prior to the date set forth in the park owner's original notice of rent increase, or if the amount certified is different than the amount stated in the park owner's original rent increase notice, the park owner must send out a new notice of rent increase advising the mobile home owners of the actual increase and the actual effective date. Such a notice shall not be subject to review under this ordinance, provided the amount set forth in the notice does not exceed the certified amount.

Section 3-13105. Housing service reduction rent increases.

(a) Notice of housing service reduction and rent decrease:

(1) If the park owner proposes to reduce housing services while simultaneously decreasing space rents in an amount corresponding to the cost of the housing service reduction, the park owner shall provide each affected mobile home

owner with written notice delivered (personally or by mail) not less than thirty calendar days from the proposed effective date of the reduction in housing services and decrease in space rent. (If the park owner intends to reduce any housing service without a decrease in space rent equal in cost to the reduction in housing service, the park owner shall petition for a major rent increase pursuant to section 3-13106.)

(2) The written notice required pursuant to section 3-13105(a)(1) above shall advise the affected mobile home owner of the specific housing service reduction, a summary of the contracts or invoices demonstrating the cost of the housing service to the park owners, the cost savings to the park owner resulting from the housing service reduction, the corresponding reduction in rent to be provided to the affected mobile home owner and the manner in which said reduction in rent has been calculated. The notice shall also include the following information in substantially the following form: YOU MAY HAVE THE RIGHT TO CHALLENGE THE PARK OWNER'S DETERMINATION OF THE RENT DECREASE PROVIDED FOR UNDER THIS NOTICE, PURSUANT TO THE CITY OF FREMONT'S RENT STABILIZATION ORDINANCE. FOR MORE INFORMATION REGARDING YOUR RIGHTS YOU MAY CONTACT THE CITY OF FREMONT'S RENT REVIEW OFFICE AT (510) __- __. Concurrently with providing said notice to the affected mobile home owner the park owner shall provide the rent review officer with copies of any and all contracts, invoices or other documents demonstrating the cost of the housing service to the park owners.

(b) Claim of mobile home owner of reduction in housing service without concurrent decrease in space rent: If the park owner proposes or effectuates a rent increase by a reduction in housing service without concurrent notice of decrease in space rent pursuant to subsection (a) (or fails to file a petition for a major rent increase pursuant to section 3-13106, prior to effectuating the reduction in housing service), any affected mobile home owner may, within a reasonable period of time not to exceed one year from the date of receipt of the first monthly rent notice following commencement of the reduction in housing services, deliver written notice (personally or by mail) to the park owner, which sets forth specifically the affected mobile home owner's claim asserting that there has been a rent increase, and the specific failure of the park owner to reduce space rent in an amount equal to the cost of the reduction in the housing service as required pursuant to subsection (a).

(c) Compliance by park owner: Within ten calendar days of delivery of such notice (personally or by mail) pursuant to subsection (b), the park owner may reply to the affected mobile home owner. If the park owner concedes, in whole or in part, that there has been a reduction in housing services without a decrease in space rent equal in cost to the reduction in housing services as required pursuant to subsection (a), the park owner shall specify in the reply the actions taken or to be taken by a date certain to comply with the requirements of subsection (a) and other provisions of this ordinance.

(d) Petition for hearing: If the affected mobile home owner does not accept the reply from the park owner as a resolution of the dispute, or if the park owner does not provide a reply, the affected mobile home owner may commence the rent dispute resolution process by filing a petition for hearing to be conducted pursuant to section 3-13107.

(e) Consolidation of petitions: The rent review officer shall, to the extent possible consistent with the time limitations provided in this ordinance, consolidate separately filed petitions involving the same issue or issues of housing service. All petitions so consolidated shall thereafter be referred to as the petition (in the singular). Consolidation of petitions shall not affect individual petitioners' desire to be separately represented.

Section 3-13106. Major rent increases.

(a) Petition required: Any major rent increase proposed by a park owner pursuant to subsection (e) of section 3-13104 shall be made only pursuant to a petition filed by the park owner, and subsequent hearing and approval by a hearing officer.

(b) Petition contents: Any petition filed by a park owner pursuant to this section shall be submitted under penalty of perjury by the park owner, and shall be on a form approved by the rent review officer, which form shall contain at least the following information:

- (1) The address of the mobile home park;
- (2) The space number of each mobile home space for which a rent increase is requested;

(3) The current and proposed rent schedules for each mobile home space in the mobile home park, including the amount of the requested rent increase for each mobile home space, stated in dollars and cents;

(4) The facts supporting the requested rent increase, including supporting documentation;

(5) The actual income and operating expenses by category for the mobile home park for each year of a two year period ending no more than six months before the proposed effective date of the rent increase;

(6) A schedule of other anticipated fees and income from the mobile home park;

(7) The vacancy rates in the mobile home park during the preceding two year period;

(8) A list of any current leases for mobile home spaces unaffected by the proposed rent increase extending beyond the effective date of the rent increase; showing the date that each lease expires and the amount and date of change in the space rent for such lease;

(9) Any other information affecting the need for the proposed rent increase that is required by the rent review officer; and

(10) Any other information that the park owner deems relevant.

(c) Proof of service: The petition shall be accompanied by a proof of service, indicating that a complete copy of the petition has been filed at the main public library and at the on-site manager's office, for inspection by the mobile home owners. The petition shall also be accompanied by a proof of service indicating that notice of the petition has been served on every space at the mobile home park. At a minimum, the notice of petition shall advise the mobile home owners of the amount of the requested rent increase and that a copy of the petition is available for their inspection at the rent review office, the main public library and the on-site manager's office. The notice of petition shall also briefly summarize the park owner's reasons for filing the petition. All proofs of service under this paragraph shall be made under penalty of perjury.

(d) History of rent increases: The park owner shall include in any such petition all rent increases desired for a particular mobile home park for that year. No more than one petition may be filed for each mobile home park each year.

(e) Petition filing fee: No advance filing fee shall be charged with respect to any petition for a major increase filed pursuant to this ordinance. The cost of processing the petition for a major rent increase shall be recouped by the city as administrative fees under section 3-13115(b).

(f) Complete petition: Within fifteen working days after receipt of the park owner's petition, the rent review officer shall determine if the petition is complete and shall notify the park owner of any additional information or documentation required to make the petition complete. The park owner shall submit such information within fifteen calendar days after notice from the rent review officer, with a proof of service as provided in subsection (c). Such time may be extended for good cause shown.

(g) Notice of petition: Within ten working days after receipt of a complete rent increase petition, the rent review officer shall give written notice of the petition, by mail, to the affected mobile home owners specified in the petition. If all the affected mobile home owners notify the rent review officer within ten calendar days after such notice that the requested rent increase is accepted by them, all proceedings on the petition shall cease and the park owner may implement such rent increase by compliance with the notice requirements under state law.

(h) Burden of proof: In any rent increase proceeding pursuant to this section, the burden shall be upon the park owner to prove entitlement to a rent increase by a preponderance of the evidence.

(i) Hearing procedure: The procedure for the hearing shall be pursuant to section 3-13107.

Section 3-13107. Petition hearings.

(a) General: Hearings on petitions filed pursuant to sections 3-13104, 3-13105, and 3-13106, shall be conducted pursuant to the procedure prescribed in this section. Upon receipt of the petition, the rent review officer shall, within ten working days, assign a hearing officer. The rent review officer shall set a date for the hearing no sooner than ten calendar days nor later than thirty calendar days after the hearing officer is assigned, provided that the rent review officer or hearing officer may set or reset the date for the hearing at a later date upon application of either or both parties, when warranted for the issuance of subpoenas, or other good cause. The park owner and all

affected mobile home owners (whether or not signatories of the petition) shall be notified forthwith in writing by the rent review officer of the date, time, and place of the hearing, and this notice shall be served either in person or by mail.

(b) Conduct of hearing: The park owner and affected mobile home owners may appear at the hearing and offer oral and documentary evidence. The hearing officer shall exercise discretion in the determination of facts. The hearing officer need not require that formal rules of evidence be observed, provided that constitutional rights for a fair hearing are protected. The hearing officer may grant or order not more than two continuances of the hearing for not more than ten working days each, unless the arbitrator determines good cause is shown for additional or longer continuances or both parties stipulate to additional or longer continuances.

(c) Representation of parties: The parties in any hearing are entitled to be represented by an attorney of their choice. Written designation of representatives shall be filed with the rent review officer or the hearing officer at or prior to the time of the representation.

(d) Hearing findings and determination: The hearing officer shall, within fifteen working days of the conclusion of the hearing (including receipt of any briefs or supplemental information from the parties which was requested, directed or allowed by the hearing officer), submit a written statement of decision and the reasons for the decision by mail to the rent review officer, who shall forthwith distribute copies of the decision by mail to the park owner and all affected mobile home owners. The hearing officer shall determine the amount of rent increase, if any, and the effective date of the rent increase, which are reasonable based upon all the provisions of this ordinance.

(e) Burden of proof: The burden of proving the reasonableness of the proposed rent increase for a major rent increase pursuant to section 3-13106, or a standard rent increase and/or an administration fee rent increase pursuant to section 3-13104, shall be on the park owner. The burden of proof to show an alleged housing service reduction shall be upon the affected mobile home owners who have filed a petition alleging housing service reductions pursuant to section 3-13105.

(f) Attorneys fees: This ordinance makes no provision for attorneys' fees and costs as between park owners and mobile home owners with respect to any administrative proceeding regarding this ordinance, including any court appeal of any administrative

decision made pursuant to this ordinance. Under no circumstances shall either party be allowed to apply for or recover attorneys' fees from the other in proceedings under this ordinance, regardless of which party is the prevailing party. Nothing in this section shall be deemed to preclude a park owner from seeking attorneys' fees from the city pursuant to any state or federal remedies that may be available. Attorneys' fees in civil actions regarding claims of retaliation are governed by section 3-13113(c) of this ordinance.

(g) Decision final: The decision of the hearing officer is final and binding upon the park owner and all affected mobile home owners, regardless of whether any affected tenant challenged a petition filed by the park owner or was a signatory of a petition filed by affected mobile home owners or was present or represented at the hearing. The decision of the hearing officer shall be subject to judicial review pursuant to section 1094.5 of the Code of Civil Procedure.

(h) Withdrawal of petition: Nothing in this ordinance shall preclude or invalidate an agreement between the park owner and any affected mobile home owner which results in the mobile home owner withdrawing as a challenger to the park owner's petition or withdrawing as a petitioner filed by affected mobile home owners, either before or after the hearing officer's decision or the decision of a court, provided that the agreement contains no provision by which the mobile home owner prospectively waives rights under this ordinance. Any such prospective waiver of rights shall be deemed contrary to public policy and void and unenforceable.

(i) Settlement of disputes:

(1) Notwithstanding anything in the preceding section to the contrary, in order to promote settlement, while at the same time protecting the mobile home owners from the possibility of overreaching, nothing in this ordinance shall preclude a park owner and a mobile home owner from settling a dispute regarding the appropriate rent level for a mobile home owner's space, even if said settlement results in the mobile home owner agreeing to accept a rent increase that may be greater than the rent level that might be awarded if the parties proceeded with litigation of said dispute.

(2) Any settlement entered into pursuant to this subsection shall be pre-approved by either a hearing officer appointed by the rent review officer at the mutual request of the parties to the proposed settlement or a court of competent jurisdiction. In the event the parties mutually request the rent review officer to appoint a

hearing officer for purposes of reviewing a proposed settlement, said appointment shall be made within fifteen days. Unless the parties mutually request otherwise, the hearing officer appointed for settlement purposes shall have no communication with the hearing officer appointed for the hearing on the merits regarding their respective appointments. Nothing in this subsection shall be construed to require pre-approval of any long term lease entered into between the parties to a dispute, provided said long term lease is entered into pursuant to the provisions of Civil Code section 798.17, which provision "exempts" certain long term leases from rent stabilization.

Section 3-13108. Petition hearing subpoenas.

(a) Affidavit: Upon the filing of an affidavit showing good cause by any party, the hearing officer may issue a subpoena requiring a person or entity to attend at a particular time and place to testify as a witness and/or to produce records, documents or things. Subpoenas shall be issued and attested to by the hearing officer in the name of the city. The affidavit shall specify the exact matters or things desired to be produced, setting forth in full detail the materiality thereof to the issues involved in the proceeding and stating that the witness has the desired matters or things in the witness' possession or under the witness' control, and a copy of such affidavit shall be served with the subpoena. Subpoenas shall designate the business records, documents and tangible things to be produced either by specifically describing each individual item or by reasonably particularizing each category of item.

(b) Service of subpoenas: Any subpoena, requiring that a witness personally appear to give testimony at a petition hearing and issued pursuant to the provisions of this ordinance, must be served in person and must be served at least five calendar days before the hearing for which the attendance is sought. Any subpoena *duces tecum*, issued pursuant to the provisions of this ordinance requiring production of business documents only may be served by first-class mail, and must be served at least twenty calendar days before the date set forth on the face of the subpoena. Notwithstanding any other provision of this ordinance, such time limits may be extended by the hearing officer to such time as is necessary upon good cause being shown. Any subpoena or subpoena *duces tecum* issued pursuant to the provisions of this section shall be deemed issued by and in the name of the city.

(c) Payment of costs for subpoenas duces tecum: All reasonable costs incurred by any witness who is not a party with respect to the production of all or any part of business records, the production of which is requested pursuant to a subpoena *duces tecum* may be charged against the party serving the subpoena *duces tecum*. "Reasonable cost," as used in this section shall include, but not be limited to, the following specific costs: ten cents per page for standard reproduction of documents of a size eight and one-half by fourteen inches or less; twenty cents per page for copying of documents from microfilm; actual costs for the reproduction of oversize documents requiring special processing that are made in response to a subpoena; reasonable clerical costs incurred in locating and making the records available to be billed at the maximum rate of sixteen dollars per hour per person, computed on the basis of four dollars per quarter hour or fraction thereof; actual postage charges; and actual costs, if any, charged to the witness by a third person for the retrieval and return of records held by that third person. The requesting party shall not be required to pay those costs or any estimate thereof prior to the time the records are available for delivery pursuant to the subpoena, but the witness may demand payment of costs pursuant to this section simultaneous with actual delivery of the subpoenaed records, and until such time as payment is made, is under no obligation to deliver the records. If a subpoena is served to compel the production of business records and is subsequently withdrawn or modified, the witness shall be entitled to reimbursement for all costs incurred in compliance with the subpoena to the time that the requesting party has notified the witness that the subpoena has been withdrawn or modified. Where the records are delivered to the attorney or the attorney's representative for inspection or photocopying at the witness' place of business, the only fee for complying with the subpoena shall not exceed fifteen dollars, plus actual costs, if any, charged to the witness by a third person for retrieval and return of records held off-site by a third person. If the records are retrieved from microfilm the reasonable cost, as defined above, shall also apply.

(d) Payment of costs for subpoenas requiring personal attendance: When the personal attendance of the custodian of a record or other qualified witness not a party to the hearing is required, said witness shall be entitled to witness' fees for each day's actual attendance in the amount of thirty-five dollars a day plus twenty cents per mile actually traveled, both ways. The fee for one day's attendance and mileage must be delivered to

the witness at the same time the subpoena is served upon said witness, if demanded by him or her.

(e) Notice to appear: Parties to administrative proceedings may be required to appear and testify pursuant to a notice to appear served on the party or the party's attorney, pursuant to the procedures set forth in Code of Civil Procedure section 1987.

(f) Exclusive means of discovery: Other than the subpoenas and notices to appear described in subsection (a) and (e) above, there shall be no additional discovery in proceedings before the hearing officer. This is necessary to make the proceedings under this ordinance as quick, inexpensive and un-intimidating as possible.

Section 3-13109. Standards of review for major rent increase.

In evaluating a major rent increase proposed by the park owner, the following factors should be considered:

(a) Unavoidable increases in maintenance and operating expenses, including but not limited to, the reasonable value of the park owner's labor and any increased costs for services provided by a public agency, public utility or quasi-public agency or utility.

(b) The substantial rehabilitation or the addition of capital improvements by the park owner seeking the major rent increase, including the reasonable value of the park owner's labor, as long as such rehabilitation or improvement has been completed and is:

(1) Distinguished from ordinary repair or maintenance;

(2) For the primary benefit, use and enjoyment of the affected mobile home owners;

(3) Permanently fixed in place or relatively immobile and appropriated to the use of the mobile home park;

(4) Not coin-operated nor one for which a "use fee" or other charge is imposed on affected mobile home owners for their use; and

(5) Cost-factored and amortized over the remaining useful life of the rehabilitation or improvement.

(c) The rental history of the affected mobile home spaces and the mobile home park, for the immediately preceding thirty-six months, including:

(1) The presence or absence of past rent increases;

(2) The frequency of past rent increases; and

(3) The occupancy rate of the mobile home park in comparison to comparable mobile home parks in the same general area.

(d) The physical condition of the affected mobile home spaces and mobile home park, including the quantity and quality of maintenance and repairs performed during the preceding twelve months, as well as the long term patterns of operating, maintenance and capital improvement expenditures.

(e) Any increase or reduction of housing services since the last rent increase.

(f) Existing space rents for comparable mobile home spaces in other comparable mobile home parks.

(g) A decrease in net operating income.

(h) A fair return on the property prorated among the mobile home spaces of the mobile home park.

(i) Other financial information that the mobile home park owner is willing to provide.

(j) Whether any expense is clearly excessive, given the industry standard for the same item. In such cases the hearing officer may make an appropriate adjustment.

(k) In no event may a hearing officer place a cap on any rent increase allowable under this ordinance, specifically including but not limited to any rent increase necessary to provide a park owner with a fair return on investment.

Section 3-13110. Net operating income evaluation for major rent increases.

In evaluating a major rent increase proposed to maintain the park owner's net operating income from the mobile home park, the following definitions and provisions shall apply:

(a) Net operating income of a mobile home park means the gross income of the mobile home park less the operating expenses of the mobile home park.

(b) Gross income means gross income from operation of the mobile home park business, including the sum of the following:

(1) Gross space rents received, provided that uncollected space rents in excess of one percent of gross space rent shall be presumed to be unreasonable and shall be computed as income. The park owner may rebut the presumption by demonstrating reasonable efforts to collect said uncollected rents, in conformance with industry standards have been made; plus

(2) All other income or consideration received from operation of the mobile home park business, and/or in connection with use or occupancy of a mobile home space and related services, including but not limited to interest paid by the mobile home owners to park owner.

(c) Operating expenses means actual expenditures in operating the mobile home park business, including the sum of the following:

(1) Real property taxes and assessments.

(2) Utility costs to the extent that they are included in space rent.

(3) Management expenses, including the compensation of administrative personnel (including the value of any mobile home space offered as part of compensation for such services), reasonable and necessary advertising to ensure occupancy only, legal and accounting services as permitted herein, and other managerial expenses. Management fees to property management companies are presumed to be not more than five percent of gross income, unless greater management expenses can be documented.

(4) Normal repair and maintenance expenses for the grounds and common facilities of the mobile home park, including but not limited to landscaping, cleaning, and repair of equipment and facilities.

(5) Park-owner-performed labor in operating or maintaining the park. In addition to the management expenses listed in paragraph c., where the park owner performs managerial or maintenance services which are uncompensated, the park owner may include the reasonable value of such services. Park-owner-performed labor shall be limited to five percent of gross income unless the arbitrator finds that such a limitation would be substantially unfair in a given case. No credit for such services shall be authorized unless the park owner documents the hours utilized in performing such services and the nature of the services provided.

(6) Operating supplies such as janitorial supplies, gardening supplies, stationery, and so forth.

(7) Insurance premiums prorated over the life of the policy.

(8) Other taxes, fees and permits, except administration fees assessed or paid pursuant to section 3-13115.

(9) Reserves for replacement of long-term improvements or facilities, provided that said reserves shall not exceed five percent of gross income.

(10) Capital improvement costs, to the extent said capital improvement costs are not passed through in the form of a rent increase pursuant to section 3-13104(d).

(I) To be included as an operating expense a capital improvement expense shall be amortized over the reasonable life of the improvement or such other period as may be deemed reasonable by the arbitrator under the circumstances when considered in light of existing IRS standards, using the "Class Life Asset Depreciation Range System" (ADR System).

(II) In the event that the capital improvement expenditure is necessitated as a result of an accident, disaster, or other event for which the park owner receives insurance benefits, only those capital improvement costs otherwise allowable exceeding the insurance benefits may be calculated as operating expenses.

(11) Involuntary refinancing of mortgage or debt principal. The park owner may include certain debt service costs as an operating expense. Such costs are limited to increases in interest payments from those interest payments made during 1985 or the first year such payments were made if the park owner acquired the park after 1985 that result from one of the following situations or the equivalent thereof:

(I) Refinancing of the outstanding principal owed for the acquisition of the mobile home park where such refinancing is mandated by the terms of a financing transaction entered into prior to December 1, 1985, for instance, termination of a loan with a balloon payment; or

(II) Increased interest costs incurred as a result of a variable interest rate loan used to finance the acquisition of the mobile home park and entered into prior to December 1, 1985.

In refinancing, increased interest shall be permitted to be considered as an operating expense only where the park owner can show that the terms of the refinancing were reasonable and consistent with prudent business practices under the circumstances.

(d) Operating expenses shall not include the following:

- (1) Avoidable and unnecessary expense increases since the base year.
- (2) Debt service expenses, except as provided in subsection (3)k.
- (3) Depreciation.

(4) Any expense for which the park owner has been or will be reimbursed, by any security deposit, insurance payment or settlement, judgment for damages, settlement or any other method.

(5) Legal or attorneys' fees or costs incurred or related to proceedings under this ordinance.

(6) Any damages, penalties, fees or interest assessed or awarded for violation of any provision of this ordinance or of any other provision of law.

(7) Reserve accounts except as set forth in section 3-13110(3)i.

(8) Expenses clearly unrelated to the operation of the mobile home park.

(9) Expenses clearly excessive in relation to the industry standard for the same item.

(10) Expenses related to the sale or conversion of the mobile home park.

(11) The costs of capital improvements associated with the purchase and/or installation of meters or other similar devices used for the separate billing of utilities, unless the park owner can demonstrate said capital improvement benefits the mobile home owner.

(e) All operating expenses must be reasonable. Whenever a particular expense exceeds the normal industry or other comparable standard, the park owner shall bear the burden of proving the reasonableness of the expense. To the extent that the arbitrator finds any such expense to be unreasonable, the arbitrator may adjust the expense to reflect the normal industry or other comparable standard.

(f) Base year operating expenses and gross income for purposes of this ordinance shall mean operating expenses and gross income in calendar year 1986.

(g) In evaluating a major rent increase proposed on the ground that the park owner is not receiving a fair return on investment the hearing officer shall consider all relevant factors, without limitation, including actual income and actual expenditures associated with operation of the mobile home park business.

Section 3-13111. Obligations of the parties.

(a) If the final decision by the hearing officer finds that the rent increase, for a standard, administration fee, or major rent increase or any portion thereof, is justified, each affected mobile home owner shall pay, to the extent such payment has not already been made by the mobile home owner, the amount found justified to be paid to the park owner within thirty calendar days after the decision is made.

(b) If the final decision by the hearing officer finds that the rent increase, for a standard, administration fee, major rent increase, or service reduction or any portion thereof, is not justified, the park owner shall refund any amount found to be unjustified, to the extent such amount has already been paid by the affected mobile home owner, to each affected mobile home owner within thirty days after the decision is made. If such refund is not made within thirty calendar days, the affected mobile home owner may withhold the amount from the next space rent payment or payments until the full amount of the refund has been made.

(c) Any sum of money that under the provisions of this section is the obligation of the park owner or an affected mobile home owner, as the case may be, shall constitute a debt and, subject to the foregoing provisions of this section, may be collected in any manner provided by law for the collection of debts.

Section 3-13112. Mobile home owner's right of refusal to pay.

An affected mobile home owner may refuse to pay any rent increase that is in violation of this ordinance, provided the affected mobile home owner has commenced the rent dispute resolution process in the case of a standard, administration fee or service reduction claim and either no final decision has been reached by a hearing officer or the rent increase has been determined to violate the provisions of this ordinance. Such refusal to pay shall be a defense in any action brought to recover possession of a mobile home space or to collect the rent increase, which action is attributed to the refusal to pay.

Section 3-13113. Retaliation; mobile home owners' right to organize.

(a) No park owner, manager or agent thereof may retaliate against a mobile home owner for the mobile home owner's assertion or exercise of rights under this ordinance, in any manner, including but not limited to: improperly threatening to bring or bringing an action to recover possession of a mobile home space; engaging in any form

of harassment; improperly decreasing housing services; improperly increasing the space rent; or improperly imposing a security deposit or any other charge payable by a mobile home owner.

(b) In an action by or against a mobile home owner, evidence of the assertion or exercise by the mobile home owner of rights under this ordinance or other activity in furtherance of mobile home owners' rights and organizations within six months prior to the alleged act of retaliation shall create a presumption affecting the burden of producing evidence that the park owner's conduct was in retaliation for the mobile home owner's assertion or exercise of rights under this ordinance.

(c) Any mobile home owner whose rights under section 3-13113(a) are violated may bring a civil action against the park owner for declaratory, and/or injunctive relief, and/or for damages. If the mobile home owner prevails in such an action, the park owner shall be liable for actual damages, plus attorneys' fees and court costs. Although a park owner's agent may be sued for declaratory and/or injunctive relief under this section in no event may a mobile home owner bring an action for damages directly against a park owner's agent or recover attorneys' fees from a park owner's agent.

Section 3-13114. Mobile home owner's right to agree to term of lease.

(a) Every mobile home owner and prospective mobile home owner shall have the option to reject the offered rental agreement and accept a rental agreement for a term of twelve months or less, including a month-to-month agreement.

(b) Before any rental agreement or lease in excess of twelve months is executed by the mobile home owner or prospective mobile home owner, the park owner must (i) offer the mobile home owner or prospective mobile home owner the option of a rental agreement for a term of twelve months or less, (ii) provide the mobile home owner or prospective mobile home owner with a copy of this ordinance, and (iii) inform the mobile home owner or prospective mobile home owner both orally and in writing that if he or she signs a lease or rental agreement, it may not be subject to the terms and protection of this ordinance.

(c) A notice, which conforms to the following language and printed in bold letters of the same type size as the largest type size used in the rental agreement, shall be presented to the mobile home owner or prospective mobile home owner at the time of

presentation of a rental agreement creating a tenancy with a term greater than twelve months:

IMPORTANT NOTICE TO MOBILE HOME OWNER REGARDING THE PROPOSED RENTAL AGREEMENT FOR _____ MOBILE HOME PARK.

___ PLEASE TAKE NOTICE THAT THIS RENTAL AGREEMENT CREATES A TENANCY WITH A TERM IN EXCESS OF TWELVE MONTHS. BY SIGNING THIS RENTAL AGREEMENT, YOU ARE EXEMPTING THIS MOBILE HOME SPACE FROM THE PROVISIONS OF THE CITY OF FREMONT MOBILE HOME SPACE RENT STABILIZATION ORDINANCE FOR THE TERM OF THIS RENTAL AGREEMENT. THIS FREMONT ORDINANCE AND THE STATE MOBILE HOME RESIDENCY LAW (CALIFORNIA CIVIL CODE SEC. 798 et seq.) GIVE YOU CERTAIN RIGHTS. BEFORE SIGNING THIS RENTAL AGREEMENT, YOU MAY CHOOSE TO SEE A LAWYER. UNDER THE PROVISIONS OF STATE LAW, YOU HAVE A RIGHT TO BE OFFERED A RENTAL AGREEMENT FOR (1) A TERM OF TWELVE MONTHS, OR (2) A LESSER PERIOD AS YOU MAY REQUEST, OR (3) A LONGER PERIOD AS YOU AND THE MOBILE HOME PARK MANAGEMENT AGREE. YOU HAVE A RIGHT TO REVIEW THIS AGREEMENT FOR THIRTY DAYS BEFORE ACCEPTING OR REJECTING IT. IF YOU SIGN THE RENTAL AGREEMENT YOU MAY CANCEL THE RENTAL AGREEMENT BY NOTIFYING THE PARK MANAGEMENT IN WRITING OF THE CANCELLATION WITHIN SEVENTY-TWO HOURS OF YOUR EXECUTION OF THE AGREEMENT. IT IS UNLAWFUL FOR A MOBILE HOME PARK OWNER OR ANY AGENT OR REPRESENTATIVE OF THE OWNER TO DISCRIMINATE OR RETALIATE AGAINST YOU BECAUSE OF THE EXERCISE OF ANY RIGHTS YOU MAY HAVE UNDER THE FREMONT MOBILE HOME ORDINANCE, OR BECAUSE OF YOUR CHOICE TO ENTER INTO A RENTAL AGREEMENT THAT IS SUBJECT TO THE PROVISIONS OF THAT ORDINANCE.

(d) The notice described in the previous subsection shall contain a place for the mobile home owner or prospective mobile home owner to acknowledge receipt of the notice and shall also contain an acknowledgement signed under penalty of perjury by the park owner or manager that the notice has been given to the mobile home owner or prospective mobile home owner in accordance with the previous subsection. A copy of the notice executed by the park owner or manager shall be provided to the mobile home owner or prospective mobile home owner.

(e) Pursuant to section 798.17 of the Civil Code, the provisions of this ordinance regulating the amount of space rent that a park owner may charge for a mobile home space shall not apply to any tenancy created by a rental agreement that is in excess of twelve months in duration, provided that the rental agreement meets the criteria of section 798.17(b). This exemption shall apply only during the term of such an agreement or one or more uninterrupted, continuous extensions of such an agreement. If a rental agreement expires or is terminated and no new such agreement is entered into, then the last space rent charged under the provisions of the previous rental agreement shall be the space rent charged for the mobile home space, and the space rent for that mobile home space may be increased only in accordance with the provisions of this ordinance.

Section 3-13115. Administration fees.

(a) One hundred percent of the costs incurred in the administration of the provisions of this ordinance shall be reimbursed by park owners to the city. The fee shall be determined by the city from all the costs incurred in the administration of this ordinance, in the prior calendar or fiscal year, based on (i) the general costs of administration, including the costs of defending the ordinance, (ii) the direct costs incurred in the rent dispute resolution process, including the costs of hearing. The general costs shall be apportioned equally to all mobile home spaces in the city as allowed pursuant to state law. The direct costs shall be apportioned equally to all affected mobile home spaces in the specific mobile home parks directly involved in a specific rent dispute resolution proceeding. Park owners may pass through thirty-five percent of the administration fees assessed against them to the mobile home owners. The portion of the fee to be passed through shall be apportioned equally among the affected mobile home

spaces. Sixty-five percent of the fee must be borne by the park owners and may not be passed through in any manner to the mobile home owners.

(b) The administration fees imposed by subsection (a) shall be paid by the park owner within forty-five days from the date of mailing of the billing by the city. Assessment and collection of penalties for delinquent payment of the fees imposed by this section shall be as provided in Chapter 1 of Title V of the Fremont Municipal Code. The city manager shall recommend to the city council the amount of administration fees, and the city council shall adopt such fees by resolution.

Section 3-13116. Non-waiverability.

Except where contrary to state law, including Civil Code section 798.17, any provision, whether oral or written, in or pertaining to a rental agreement whereby any provision of this ordinance is waived or modified, is against public policy and void.

Section 3-13117. Remedies and penalties.

In addition to those remedies and penalties set forth elsewhere in this ordinance, the following remedies and penalties shall apply:

(a) Award by hearing officer: When a hearing officer finds that a park owner has demanded, received or retained space rent from any mobile home owner to which the park owner is not entitled, the hearing officer:

(1) Shall award restitution to the mobile home owners of the excess space rent demanded, received, or retained by the park owner.

(2) May impose a civil penalty (payable to the city) not to exceed \$500, provided the hearing officer first finds the park owner's conduct was willful.

(b) Court decision: When a court in reviewing a decision of a hearing officer finds that a park owner has demanded, received or retained space rent to which the park owner is not entitled, the court shall award costs and reasonable attorney's fees to the mobile home owner, and may award up to three times the actual damages incurred by a mobile home owner as a result of space rent demanded, received or retained by the park owner, provided the court first finds the park owner's conduct was willful.

(c) In no event may a hearing officer or court award civil penalties or treble damages where a park owner has cured an alleged mistake within fifteen days of notice

of the alleged mistake from the rent review officer as set forth in section 3-13104(i) of this ordinance.

Section 3-13118. Review of ordinance by the city council.

(a) This ordinance shall remain in force until repealed by ordinance adopted by the city council.

(b) If a park owner reports in writing to the housing director the occurrence of a vacancy rate of five percent among the mobile home spaces in the mobile home park owned by such park owner in the preceding calendar month, the housing director shall track the vacancy rate for each and all mobile home parks for the next six months, and if the vacancy rate for all mobile home spaces in all the mobile home parks in the city exceeds five percent for each of the six months, the housing director shall promptly report such occurrence to the city manager who shall schedule the report for consideration by the city council at a regular or special meeting called for such purpose. Upon receipt of the report, the city council shall review the report and the effectiveness of this ordinance in addressing the problems giving rise to its enactment and take appropriate legislative action thereon. Notice of the time and place of city council review shall be published at least ten days prior to said date in a newspaper of general circulation in the city. In addition, notice shall be posted in a public place within each mobile home park.

Section 3-13119. Severability.

This ordinance shall be liberally construed to achieve its purposes and preserve its validity. If any provision or clause of this ordinance or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable and are intended to have independent validity.

